

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PROCUREMENT  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
to  
**CONTRACT NO. 071B9200202**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Kevin's Lawn Care & Snow Removal, Inc. 1347 S. Range Road St. Clair, MI 48079	Kevin Hutkowski	kevinslawnandsnow@hotmail.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	810-329-3633	3251

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Meghan Butler	810-984-3131	butterm14@michigan.gov
BUYER	DTMB	Steve Riggs	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Mowing Services – Bay Region Office – Bluewater Bridge - MDOT</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 20, 2009	May 1, 2014	2, one year	May 1, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:							
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE			
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	May 1, 2016			
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:					
\$0.00		\$302,889.18					
Effective May 1, 2015, the second option year available on this contract is hereby exercised. The revised contract expiration date is May 1, 2016. The contract is adding Port Huron Welcome Center in addition to existing roadside mowing services. Revised <b>Attachment A, Location Listing</b> is attached.							
All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, and DTMB Procurement approval.							

Change Notice Number 3

Contract Number 071B9200202

## ROADSIDE MOWING SERVICES

Check all that apply	DESCRIPTION OF SERVICES	ACRES PER CYCLE	CYCLES PER YEAR	PRICE PER ACRE (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Flat & Slope Mowing and trim  Blue Water Bridge & surrounding MDOT property  Maintenance Facility located on I-94	41	24	\$25.97	\$25,554.48
<input type="checkbox"/>	Spring & Fall Clean Up to be performed once in the Spring and once in the Fall, for the plaza area, areas around the ramps and the Employee Parking Lot, and Maintenance Facility located on I-94	41	2	\$11.83	\$970.06
	Port Huron Welcome Center	5	24	\$32.00	\$3,840.00
SUBTOTAL					\$30,364.54

**Quantities are estimates only; actual quantities will determined by Contract Compliance Inspector.**

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 2 (REVISED)**

to

**CONTRACT NO. 071B9200202**

between

**THE STATE OF MICHIGAN**

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Kevin's Lawn Care & Snow Removal, Inc. 1347 S. Range Road St. Clair, MI 48079	Kevin Hutkowski	kevinslawnandsnow@hotmail.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(810) 329-3633	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT			
BUYER	DTMB	Pam Mason	734-367-8409	Masonp1@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Mowing Services – MRO – Bay Region Office/Bluewater Bridge – MDOT</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 20, 2009	May 1, 2014		May 1, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	May 1, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$25,877.60		\$302,889.18		

Effective May 1, 2014, this contract utilizes an option year. New contract end date is May 1, 2015. Contract is REVISED to include an increase of \$25,877.60. Please note that the buyer has been changed to Pam Mason. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PROCUREMENT  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 2**  
to  
**CONTRACT NO. 071B9200202**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Kevin's Lawn Care & Snow Removal, Inc. 1347 S. Range Road St. Clair, MI 48079	Kevin Hutkowski	kevinslawnandsnow@hotmail.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(810) 329-3633	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT			
BUYER	DTMB	Pam Mason	734-367-8409	Masonp1@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Mowing Services – MRO – Bay Region Office/Bluewater Bridge – MDOT</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 20, 2009	May 1, 2014		May 1, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	May 1, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$277,011.58		
Effective May 1, 2014, this contract utilizes an option year. New contract end date is May 1, 2015. Please note that the buyer has been changed to Pam Mason. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.				

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

July 22, 2011

CHANGE NOTICE NO.1  
TO  
CONTRACT NO. 071B9200202  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR  Kevin's Lawn Care & Snow Removal, Inc. 1347 S. Range Road St. Clair, MI 48079  Kevinlawnandsnow@hotmail.com	TELEPHONE (810) 329-3633 Kevin Hutkowski
	BUYER/CA (517) 241-1145 Lymon C. Hunter, CPPB
Contract Compliance Inspector: See Location Specification Sheets	
<b>Mowing Services – MRO – Bay Region Office/Bluewater Bridge – Department of Transportation</b>	
CONTRACT PERIOD: From: <b>May 20, 2009</b> To: <b>May 1, 2014</b>	
TERMS  N/A	SHIPMENT  N/A
F.O.B.  N/A	SHIPPED FROM  N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **INCREASED** by \$5,431.88 and modified to allow for a 5% COCA increase per the attached revised location specification sheet. All other terms, conditions, pricing and specifications remain the same.

**AUTHORITY/REASON(S):**

Per vendor and agency agreement and the approval of DTMB Purchasing Operations.

**INCREASE: \$5,431.88**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$277,011.58**



**MAINTENANCE, REPAIR & OPERATIONS (MRO)  
ROAD SIDE MOWING – MT. PLEASANT TSC  
BPO#: 071B9200202  
REVISED LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**PART I – PLACE OF SERVICES REQUESTED**

**BIDDER NAME: KEVIN'S LAWN CARE**

**LOCATION: 02**

**CONTRACT INFORMATION**

<b>ESTIMATED CONTRACT START DATE:</b>	05/01/2009	<b>CONTRACT END DATE:</b>	04/30/2014
<b>PREVIOUS BPO #:</b>	071B2001502		
<b>CONTRACT INFORMATION:</b>	Approximately 5 Year Contract with 2 each 1 year options to extend		
<b>CONTRACTING AGENCY NAME:</b>	Department of Transportation		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Bay Region Office		
<b>BUILDING ADDRESS:</b>	55 Morley Drive, Saginaw MI 48601		
<b>REGION / COUNTY:</b>	Bay Region		

**PROCUREMENT CONTACT INFORMATION**

<b>PROCUREMENT OFFICE NAME:</b>	MDOT		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Terry Harris	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	Harrist@michigan.gov	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Mike Metiva	<b>CONTACT PHONE #:</b>	989-754-0784
<b>CCI / FM CONTACT E-MAIL:</b>	metivam@Michigan.gov	<b>CONTACT FAX #:</b>	989-754-9250

**LOCATION INFORMATION**

<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	N/A	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	N/A
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	N/A	<b>(FILL IN IF NEEDED)</b>	N/A
<b>IDENTIFY DAYS OF SERVICE:</b>	Determined by CCI	<b>IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. TO 5:30 P.M.]</b>	Determined by CCI



## PART II – PRICING SHEET SUMMARY

## ROADSIDE MOWING SERVICES

Check all that apply	DESCRIPTION OF SERVICES	ACRES PER CYCLE	CYCLES PER YEAR	PRICE PER ACRE (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Flat Mowing – Freeway: US 127, Non Freeway: US 127 BR, US 10 BR, M-20	390.2	1	\$24.41	\$9,524.78
<input type="checkbox"/>	Flat Mowing (Optional) – Freeway: US 127, Non Freeway: US 127 BR, US 10 BR, M-20	390.2	2	\$24.41	\$19,049.56
<input type="checkbox"/>	Clear Vision Flat Mowing Only (Optional) M-20	19.28	1	\$29.82	\$574.93
<b>SUBTOTAL</b>					\$29,149.27
<b>FIVE YEAR TOTAL</b>					\$145,746.37

Quantities are estimates only; actual quantities will be determined by Contract Compliance Inspector.

\*Contractor must inspect the property for tree limbs/branches and debris that would need to be removed from the grass areas prior to mowing. Debris shall also include paper on the ground and must be removed prior to mowing – must not be mowed over. Remove grass clippings as necessary.

## EQUIPMENT

Bidder Instructions: Provide a complete list of all the equipment you will utilize to manage the scope of work for this contract location. List should include all equipment to be used during services and any other function(s) needed to perform this service. Also indicate whether the equipment is owned or rented. (Expand the table if necessary or submit separate table of equipment/supplies with proposal).

## EXAMPLE EQUIPMENT &amp; SUPPLIES LIST FORMAT

EQUIPMENT	MODEL	MANUFACTURER	APPROXIMATE AGE OF EQUIPMENT & OWNED OR RENTED
1.			
2.			
3.			
4.			
5.			
6.			
7.			

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

May 26, 2009

NOTICE  
TO  
CONTRACT NO. 071B9200202  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR  <b>Kevin's Lawn Care &amp; Snow Removal, Inc.</b> <b>1347 S. Range Road</b> <b>St. Clair, MI 48079</b>  kevinlawnandsown@hotmail.com	TELEPHONE (810) 329-3633 <b>Kevin Hutkowski</b>
	BUYER/CA (517) 241-1145 <b>Lymon C. Hunter, CPPB</b>
Contract Compliance Inspector: See Location Specification Sheets <b>Mowing Services – MRO – Bay Region Office/Bluewater Bridge – Department of Transportation</b>	
CONTRACT PERIOD: From: <b>May 20, 2009</b> To: <b>May 1, 2014</b>	
TERMS  <b>N/A</b>	SHIPMENT  <b>N/A</b>
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS  <b>N/A</b>	

The terms and conditions of this Contract are those of RFP #071I9200098, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Current Authorized Spend Limit: \$271,580.00



STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B9200202  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (810) 329-3633
Kevin's Lawn Care & Snow Removal, Inc. 1347 S. Range Road St. Clair, MI 48079 kevinlawnandsown@hotmail.com		Kevin Hutkowski
		BUYER/CA (517) 241-1145
		Lymon C. Hunter, CPPB
Contract Compliance Inspector: See Location Specification Sheets		
<b>Mowing Services – MRO – Bay Region Office/Bluewater Bridge – Department of Transportation</b>		
CONTRACT PERIOD: From: <b>May 20, 2009</b> To: <b>May 1, 2014</b>		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS		N/A
MISCELLANEOUS INFORMATION:		
The terms and conditions of this Contract are those of RFP #071I9200098, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.		
Current Authorized Spend Limit: \$271,580.00		

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #071I9200098. Orders for delivery may be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

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**FOR THE CONTRACTOR:**

Kevin's Lawn Care & Snow Removal, Inc.

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

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**FOR THE STATE:**

Signature

Lymon C. Hunter, CPPB, Buyer Specialist

Name/Title

Services Division, Purchasing Operations

Division

Date



**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**

Contract No. 071B9200202  
Roadside Mowing – Slope and Flat – Blue Water Bridge

Buyer Name: Lymon C. Hunter, CPPB  
Telephone Number: (517) 241-1145  
E-Mail Address: HunterL@michigan.gov

**Estimated Timeline:**

<b>Key Milestone:</b>	<b>Date:</b>
Issue Date	2/3/09
Pre-Bid Meeting/Site Visit	2/10/09
Questions Due	2/18/09
Bid Due Date	3/3/09
Anticipated Contract Start Date	6/1/09



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#### ATTACHMENTS:

Attachment A – Location Specification Sheet

**DEFINITIONS**

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” has the meaning given in **Section 2.112**.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Contract Compliance Inspector (CCI)” refers to the Michigan Department of Transportation employee directly responsible for inspecting and approving for payment all work performed under this Contract.

Contractor refers to a vendor as defined above which has been awarded a contract by the Department for roadside mowing of freeways.

“Deleted – Not Applicable” means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

Department refers to the Michigan Department of Transportation (MDOT).

“DMB” means the Michigan Department of Management and Budget.

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.244**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders.

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.



"Ozone-depleting substance" means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

"Post-Consumer Waste" means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

"Post-Industrial Waste" means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

"Recycling" means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

"Reuse" means using a product or component of municipal solid waste in its original form more than once.

"RFP" means a Request for Proposal designed to solicit proposals for services.

"Services" means any function performed for the benefit of the State.

"Source reduction" means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

"State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

"SubContractor" means a company Contractor delegates performance of a portion of the Services to, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.

"Unauthorized Removal" means the Contractor's removal of Key Personnel without the prior written consent of the State.

"Waste prevention" means source reduction and reuse, but not recycling.

"Waste reduction", or "pollution prevention" means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

"Work in Progress" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

"Work Product" refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



**Article 1 – Statement of Work (SOW)****1.010 Project Identification****1.011 Project Request**

This contract is for Flat and Slope mowing services for the Blue Water Bridge. The acres per cycle are listed on the Location Specification Sheets (LSS) attachment A. Work to be performed for a period of five (5) years beginning on June 1, 2009 through May 30, 2014. All work will be performed between June 1 and October 30 of each contract year as solely determined by the Department. The project is to be completed by April 30, 2014. Work must be performed in accordance with the progress schedule submitted at the Pre-Maintenance Meeting and described below. The progress schedule must address all work to be completed when multiple contracts are awarded to the same vendor, including work performed as a subcontractor for a local unit of government.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

**1.012 Background – Deleted – Not Applicable****1.020 Scope of Work and Deliverables****1.021 In Scope**

The Contractor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the services as described in the specifications herein. The services requested are identified herein and during the hours specified by the Contract Compliance Inspector (CCI).

All work shall be done in accordance with all regulations governing the state agency wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of that state agency. Supplies, materials, equipment, etc. shall be confined so as not to unduly encumber the premises.

The CCI is responsible for the general administration of the contract. The CCI will be identified in the Detail Sheet. Inspection and direction by the CCI or his appointed representative shall not be considered as direct control of the individual workers and their work. The direct control shall be solely the responsibility of the contractor.

Upon written notification of contract award by MDOT, the contractor shall submit to MDOT, all required insurance certificates, and other documentation as may be requested or required hereunder. Upon their receipt, and subsequent approval by MDOT, the CCI will forward to the contractor a written NOTICE TO PROCEED with an executed copy of the contract. Work shall NOT be started until such NOTICE TO PROCEED IS RECEIVED BY THE CONTRACTOR.

Equipment to be used to perform work. (Equipment must be approved and inspected before award of the contract.) Vendors who bid on this project and in the opinion of the Department do not have proper and/or sufficient equipment and personnel to do the work within the time limits required will be rejected and the next low bidder will be allowed to demonstrate the ability to perform the work.

Default

Non-Acceptable conditions

- A. Should an inspection by MDOT reveal that the contractor's work results in any non-acceptable maintenance condition.
  - 1. MDOT, at the time of the first circumstance, shall call for a meeting with the contractor, to review the condition.
  - 2. Should a second non-acceptable condition develop, a second meeting will be held. A Vendor Performance will be issued.



3. Should a third non-acceptable condition develop, a written notice of termination may be sent to the Contractor.
- B. In the event of such termination, MDOT may deem appropriate to perform services similar to those so terminated. The contractor shall be liable MDOT for any excess costs for such services. The contractor shall not be liable for any increased cost if failure to perform the contract arises out of any cause beyond his/her control and without his/her fault of negligence.

#### 1.022 Work and Deliverable

- A. The Contractor, through innovation, technology or other means, shall perform and provide the required services and staff to complete the frequencies determined by the State and otherwise do all things necessary for, or incidental, to the performance of work. Compliance will be based on the State's overall evaluation and interpretation in accordance with method of performance, frequencies and method of performance, as set forth in this Contract.
- B. The Contractor shall provide all services and related items and services necessary for, or incidental to, the performance of work in accordance with this Contract.
- C. The Contractor shall provide services at the locations described in Attachment A and/or directed by the CCI.
- D. Work Approval

During the period of mowing operations, the contractor shall consult the CCI for inspection and tentative approval of work being accomplished, so that, in the event of unsatisfactory work, sufficient time will be available to the contractor to make corrections in a satisfactory manner within the time specified.

- E. Deductions

Failure to complete each mowing cycle as scheduled shall result in a deduction which shall consist of \$500 per day for each calendar day that the work remains uncompleted.

- F. Mowing And Trimming

##### 1. MOWING SEASON

For the purpose of this specification, the regular mowing season is defined as starting May 1<sup>st</sup>, 2009 and ending in April 30<sup>th</sup>, 2014 approximately 24 lawn maintenance cycles per year with a total of 120 mowing cycles per five year contract. Any mowing cycles before May 1 or after October 31 will require **PRIOR WRITTEN APPROVAL** from the CCI.

##### 2. PRE-MOWING MEETING

Prior to the beginning of each mowing season the Contractor and the CCI will review the grounds to identify any existing damages to landscape items.

##### 3. DAMAGES

The Contractor will be held liable for all damage done, as a result of his operation, to fixed objects such as signs, posts, buildings, sprinkling system and all vegetation including turf, trees, shrubs, flower beds and desirable natural growth. Damage shall include among other things, skinning, scraping, breaking of tree limbs or gouging of trees or shrubs and rutting, scalping or tearing turf.

- a. Costs associated with damages caused by the Contractor to plant material will be assessed based on current Michigan Forestry and Parks Association's **MICHIGAN TREE EVALUATION GUIDELINES**.



- b. All turf damage repairs shall be made by the Contractor as herein specified. Seed shall meet purity and germination requirements as specified by the CCI, and shall be a mixture of 20% perennial ryegrass, 30% Kentucky bluegrass, and 50% creeping red fescue. Only friable topsoil shall be used to fill any depressions, ruts, etc., prior to seeding. Seeding will only be allowed from April 15 through May 31, and August 15 thru September 30, unless otherwise directed by the CCI.
- c. All other property damage will be assessed for actual replacement costs including labor, materials, and equipment.
- d. The contractor will be billed for all costs related to the damages caused by his operation or be required to repair the damages as directed by the Contractor Administrator.

4. COORDINATION WITH OTHER ACTIVITIES

The contractor shall use discretion when mowing near the public. The Lawn Maintenance cycle shall begin on vacated grounds first, and then continue so as not to inconvenience the visitors. The safety of visitors shall not be jeopardized in order to complete the cycle.

Landscaping, weed spray, fertilization or other work performed by MDOT, contract agencies or other contractor may occur during the life of this contract, therefore, the Contractor shall coordinate his operations with other activities as directed by the CCI.

5. EQUIPMENT

The contractor shall furnish all equipment and necessary supplies to do the work, including but not limited to:

Gas powered mowers  
Gas powered edging machines  
Gas powered string trimmers  
Gas powered portable blowers  
Brooms, leaf rakes and other hand tools as needed

- a. The contractor shall furnish, operate, and maintain suitable and adequate equipment necessary to perform all tasks in an acceptable manner. The equipment furnished by the contractor must be in good repair and shall be maintained so as to produce a clean, sharp cut to the grass at all times. Equipment which in any way pulls or rips grass or damages the turf shall not be allowed to operate under this specification. All equipment will be or such a type so that the height of cut can be adjusted to 3 in.
- b. Under no circumstances shall MDOT be responsible for any theft, vandalism, or damage to the contractor's equipment.
- c. The Contractor's equipment **WILL NOT** be stored on MDOT property for any reason. If due to the weather the Contractor does not finish a lawn maintenance cycle in one working day the equipment shall be removed from MDOT property until such time as the weather permits completing the cycle.

6. LAWN MAINTENANCE CYCLE

The lawn maintenance cycle includes: grass mowing, trimming and edging, proper removal/disposal of lawn litter, including trash, and landscape debris such as leaves, sticks, grass clippings and organic debris by the Contractor according to the following specifications:

- a. A lawn maintenance cycle shall be completed approximately once a week. There will be approximately 24 Lawn Maintenance Cycles per year – dependent on seasonal weather conditions. Increased or decreased cycles may be required; however any additional mowing cycles beyond once a week shall be approved by the CCI or his representative prior to mowing. Any additional mowing will not be paid for unless approved, and if approved, will be paid for at the contract unit price.



- b. Once a cycle is initiated, it must continue until completed. In a section of land, all elements of the lawn maintenance cycle shall be **completed the same day they are started**. No partial mowing will be allowed unless the weather forces delays. If rain or wet turf conditions exist, the Contractor shall finish the cycle as soon as favorable conditions exist.
  - c. All clippings, edging, debris, leaves, and other debris shall be removed from the site and disposed of properly at the Contractor's expense, and shall not be disposed of in MDOT furnished dumpsters or on MDOT property.
  - d. Before a lawn mowing cycle is started, approval by the CCI must be given for the cycle. When a cycle is completed, the contractor must notify the CCI.
7. MOWING
- a. Grass shall be mowed to a minimum height of 3 inches. At no time shall more than 50% of the grass blade length be cut in one cycle. The initial mowing at the beginning of the mowing season may require an additional cycle.
  - b. Grass shall not be mowed when wet.
  - c. Clippings shall be removed, if visible, after mowing.
  - d. All clippings shall be removed from all sidewalks, roads, plaza, concrete picnic table pads, parking areas and flower and shrub beds.
  - e. The contractor is responsible for keeping wood chip material confined to the original mulched areas.
8. PRE-MAINTENANCE MEETING
- Prior to starting any work on the contract, a meeting will be called by the CCI or his representative to discuss contract provisions. The contractor's designated supervisor shall be identified at this meeting. MDOT contact personnel and phone numbers will also be identified at this time.
12. GRASS TRIMMING
- Trim grass around all fixed objects and trees at every mowing. Also trim along the fence adjacent to any mowed areas. Extreme care shall be used to prevent injury to MDOT fixed objects and trees. Contractor will be liable for damage as determined by the CCI.
13. EDGING
- Edge along all walks and curbs areas with a motorized edger once per month, during the months of May, June, July and August. Edging shall be no wider than ½ inch from edge of sidewalk/curb to lawn surface. All edging debris shall be removed from the site.
14. SLOPE MOWING
- Areas that are designated for slope mowing will not be paid for separately but payment will be included in the bid item of mowing.
15. PAYMENT
- The completed work will be paid for at the contract unit price for each item as specified on the Detail Sheet which shall be payment, in full, for all labor, equipment and materials required to satisfactorily complete the work as described here in.
16. PROTECTION OF PROPERTY
- The contractor shall be responsible for protecting and preserving from damage any and all facilities, public and private, which are adjacent to the areas where work is being performed.
17. USE OF PROPERTY
- The contractor and/or individual employees **DO NOT** have the authority to permit any use of the facility. The contractor and/or employee shall report any activity of which they were previously aware to the CCI, as soon as possible

**18. TIME AND PROGRESS**

It is understood and agreed that **"TIME IS OF THE ESSENCE"** in respect to the work contemplated herein, and the contractor agrees to do the work covered by the contract in conformity with the provisions set forth herein and to prosecute all work with all due diligence so as to complete any work required under the contract within the shortest reasonable periods of time.

**19. EQUIPMENT AND MATERIALS INSPECTION**

The Administrator shall have the right to inspect all equipment and materials that are to be used in carrying out the terms of this contract. Any such equipment or materials which do not comply with local, state and federal codes or with this contract may be rejected.

**20. ACCIDENTS**

Any accident on the premises shall be reported immediately to the appropriate MDOT garage. Regular and emergency phone numbers will be provided at the pre-maintenance meeting.

**21. FIRST AID KITS**

First Aid Kits shall be provided for the attendants' use by the contractor. At a minimum, the kits shall contain: 16 individually wrapped packaged adhesive bandages, two rolls of adhesive tape, 75mm gauze pads, 10 antiseptic wipes, burn cream, first aid cream, one triangular bandage, aspirin or acetaminophen, scissors, and tweezers. This kit shall be in an impact resistant case, and easily accessible to the attendants.

**1.030 Roles and Responsibilities****1.031 Contractor Staff, Roles, and Responsibilities****A. PERSONNEL**

1. Contractor shall identify personnel requirements by number and skill including names and proposed physical location of executive and professional personnel who would be employed in this project in its work-plan (and shall indicate through the use of organizational diagrams and/or narrative statements, the specific functions of each assigned individual with detailed qualifications of employees and subcontractors assigned to his project), for at least the following:

- Project Manager
- Staff Support

2. The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project. (See §2.040).
3. Contractor shall be responsible for repair, replacement, or cleanup as necessary due to carelessness or negligence on the part of the Contractor and its personnel.

**B. SUPERVISION**

Contractor shall provide all supervision as may be necessary to oversee its personnel:

1. Contractor shall exercise all supervisory control and general control over all day-to-day operations of his/her employees, including control over all workers duties. At the conclusion of each service, the Contractor shall inspect the route for completion and performance quality of the required services. The Contractor shall also be responsible for payment of all wages to employees, taxes, and fringe benefits, sick leave, pension benefits, vacations, medical benefits, life insurance or unemployment compensation or the like. The Contractor shall discipline his/her employees, as needed, including firing and hiring.
2. The CCI may require that Contractor immediately remove any Contractual employee(s) from the agency's premises for just cause. The Contractor will assume any and all responsibilities relating to this removal. Any employee so removed may not be placed in another state agency.



3. The CCI shall make final determination of a contractual employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Contractor's management.
- C. **CONTRACTOR GENERAL RESPONSIBILITIES AND REQUIREMENTS**  
The contractor shall be responsible for the satisfactory and complete execution of the work in accordance with the intent of the specifications. He/she shall provide, without extra charge, all incidental items required as a part of the work even though not specified or indicated.
  1. The contractor shall coordinate his/her operations with other contractors, MDOT operations and/or permitted activities. The contractor shall not give keys to individuals other than his/her employees. Parking area will be designated by MDOT  
  
Contractor to furnish:
    - a. All transportation for his employees
    - b. All maintenance equipment necessary to carry out the requirements of the contract.
    - c. Adequate and proper training for all employees.
  2. In emergencies affecting the safety of persons, the work, or property at the site or adjacent thereto, the contractor, without instruction or authorization from the CCI, is obligated to act at his/her discretion, to prevent threatened damage, injury or loss. He/she shall contact the CCI immediately of any significant changes in the work or deviations from the contract documents caused thereby.

### **1.032 State Staff Roles and Responsibilities**

CCI or agency / departmental designee shall:

- A. Staff members for each State Agency or Department will be clearly identified in this Contract.
- B. Shall provide the Contractor the general and specific orders detailing services at each Contracted location. These orders shall be deemed a portion of this Contract and failure to carry out these orders shall be considered a violation of this Contract.
- C. Give additional written or oral instructions to clarify the desired performance as determined by the CCI.
- D. If applicable, provide necessary, registered, and returnable keys for the Contractor's entrance to areas necessary for the completion of described work (Contractor must not duplicate any such keys).

### **1.040 Project Plan**

#### **1.041 Project Plan Management**

- A. For each location, a project work plan for managing implementation of the services shall be specified and submitted to the CCI for review and approval.
- B. Project management plan shall identify methods, tools, and processes proposed to oversee the project, address issues and changes as may arise, and keep the appropriate parties apprised of progress.
- C. Contractor will carry out this project under the direction and control of the specified CCI for the respective locations where services are to be performed.
- D. Contractor shall meet with the CCI and other agency or departmental project-leads, on a basis to be established by CCI and Contractor, but shall meet quarterly at a minimum, for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise, as well as continuously communicate with the agency/departmental project-lead.
- E. Annual Service Review and Progress Meeting



1. The CCI may request an audit of the services provided each year under the specifications, terms, and conditions of this Contract. The audit will be a joint activity of MDOT and Purchasing Operations.
2. An unsatisfactory audit will result in cancellation of this Contract under the terms of the Cancellation Clause in this Contract. Further, should this Contract be cancelled for cause, the Contractor so cancelled will not be allowed to participate in request(s) for continuation of this service.
3. The audit will consist of an evaluation of the total service quality, including responsiveness, timeliness of required reporting, and any other specifics as required under the terms of this Contract. The results of the audit along with Contract recommendations will be published by Purchasing Operations and distributed to the respective Agency(s).
4. Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the Contractor received, or could have reasonably been expected to receive, their copy of the audit. This meeting will provide an opportunity for the Contractor to present their reactions to audit recommendations.

#### **1.042 Reports**

The contractor shall submit to the CCI via e-mail or fax a completed “**Contractor’s Daily Activity Report**”, showing the total acres, etc. completed at the end of each work day.

#### **1.050 Acceptance**

#### **1.051 Criteria – Deleted – Not Applicable**

#### **1.052 Final Acceptance – Deleted – Not Applicable**

#### **1.060 Proposal Pricing**

#### **1.061 Proposal Pricing**

See Location Specification Sheet (LSS) Attachment A.

Contractor’s out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State’s current travel reimbursement rates. See [www.michigan.gov/dmb](http://www.michigan.gov/dmb) for current rates.

#### **1.062 Price Term**

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

The unit rate(s) quoted and established shall remain FIXED for the entire period of the Agreement, except as follows:

- a. Rate/prices are subject to change at the end of each 365-day period.
- b. Such changes shall be based on changes in actual costs for delivery of services.
- c. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change.
- d. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as CPI, PPI, and US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).
- e. Purchasing Operations also reserves the right to consider other information related to special economic and/or industry market circumstances, when evaluating a price change request.
- f. Purchasing Operations reserves the right to deny a Contractor’s request for a rate-change, and have the original, quoted rates remain in effect for the life of the Agreement.





- g. Changes may be either increase or decreases, and may be requested by either party.
- h. Approved changes shall be firm for the remainder of this Contract period unless further revised at the end of the next 365-day period.
- i. Requests for price changes shall be RECEIVED IN WRITING AT LEAST 60 days PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance and approval by the State before becoming effective.
- j. In the event new prices are not acceptable, the Contract may be cancelled.
- k. The continued payment of any charges due after September 30<sup>th</sup> of any fiscal year will be subject to the availability of an appropriation for this purpose.

**The Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is cancelled.**

### **Compensation and Payment**

#### **Method of Measurement and Basis for Payment**

The completed work "Mowing" will be measured in acres and paid for at the contract unit price per acre.

#### **Method of Payment**

The contractor shall furnish an invoice in duplicate, for services rendered for each mowing cycle for labor and equipment. The invoice shall not be prorated for incomplete cycles. Invoice for final payment, within a given year, must be submitted prior to October 31st.

The invoice shall be sent to:

MDOT – Bluewater Bridge  
Attn: Mary Riley  
1410 Elmwood  
Port Huron, MI 48060

The billing shall reference the appropriate purchase order number and shall contain, if applicable, adjustments for addition, deletions or changes in service. MDOT shall pay the billed amount in accordance with the bid rate, and the payment terms specified in the purchase order which is net 30 days after the later of the invoice date or the date the CCI certifies the invoice indicative of satisfactory completion of each mowing cycle of the entire contract area.

#### **1.063 Tax Excluded from Price**

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

#### **1.064 Holdback – Deleted – Not Applicable**



**1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this Contract****Pre-Award Meeting**

After the low bid has been determined, a meeting with that vendor and the CCI will be held at a location designated by the Department. The purpose of the meeting will be for that vendor to present the following required detailed information to the Department for review prior to the award of the contract.

- A. Equipment list indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under "Equipment Requirements" on page 5 of this document. All equipment must be in the vendor's possession, available for use and fully operational, prior to the Pre-Maintenance meeting. The vendor must provide an equipment list and any lease contracts at the Pre-Maintenance Meeting.
- B. Schedule of operations - personnel and hours.
- C. Name(s) of supervisors, 24 hour contact telephone numbers, and best contact times.
- D. Progress schedule listing locations where mowing will occur including a schedule of miles or acres to be mowed each day. Equipment failure will not constitute an acceptable reason for deviating from the progress schedule. This schedule must be approved by the Department at the Pre-Maintenance Meeting. Adjustments to this schedule including any weather-related deviations must be approved by the CCI.
- E. Safety Program, including traffic control plan.
- F. Name/location of Class II disposal site for litter/trash.
- G. Proof of Insurance as defined in the Standard Terms and Conditions attached to this document must be provided to the Purchasing Unit prior to the Pre-Award Meeting.
- H. A list of current contracts and future prospective bids.

Any misrepresentation by the contractor of its ability to perform the work described in this contract will be grounds for immediate termination. In such case, the contract will be awarded to the next lowest responsible bidder who can demonstrate the ability to perform the work.



## **Article 2. Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

This Contract is for a period of five years beginning June 1, 2009 through May 30, 2014. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 Options to Renew**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for one additional one year period.

#### **2.003 Legal Effect**

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

#### **2.004 Attachments & Exhibits**

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

#### **2.005 Ordering**

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

#### **2.006 Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

#### **2.007 Headings**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

**2.008 Form, Function & Utility**

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

**2.009 Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

**2.010 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

**2.011 No Waiver of Default**

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

**2.012 Survival**

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.020 Contract Administration****2.021 Issuing Office**

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Michigan Department of Transportation (MDOT) (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and Contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Lymon C. Hunter, CPPB  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: HunterL@michigan.gov  
Phone: (517) 241-1145

**2.022 Contract Compliance Inspector (CCI)**

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with MDOT, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DMB Purchasing Operations.** The CCI for each location is noted on the LSS and will be included in the Contract.

**2.023 Project Manager – Deleted – Not Applicable**

**2.024 Change Requests**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

**Change Requests:**

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

**2.025 Notices**

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:  
State of Michigan  
Purchasing Operations  
Attention: Lymon C. Hunter, CPPB, Buyer  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

-  
Contractor:  
Kevin's Lawncare  
Attention: Kevin Hutkowski  
1347 S. Range Road  
St. Clair, MI 48079

Either party may change its address where notices are to be sent by giving notice according to this Section.

**2.026 Binding Commitments**

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract. Contractor may change the representatives from time to time upon written notice.

**2.027 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, and servants during the performance of the Contract.

**2.028 Covenant of Good Faith**

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

**2.029 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its Contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

**2.030 General Provisions****2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

**2.032 Contract Distribution**

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

**2.033 Permits**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.034 Website Incorporation**

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

**2.035 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

**2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.037 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

**2.040 Financial Provisions****2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

**2.042 Adjustments for Reductions in Scope of Services/Deliverables**

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

**2.043 Services/Deliverables Covered**

For all Services/Deliverables to be provided by Contractor under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

**2.044 Invoicing and Payment – In General**

The completed work will be paid for at the Contract unit price each, which includes all equipment and labor to satisfactory perform the mowing services noted in the work statement. The billing shall reference the purchase order number issued for this service. The Department shall pay the billed amount in accordance with the Contract rate and the payment terms specified in the purchase order which are net 30 days after the invoice date or the date the Contract Administrator certifies the invoice indicative of satisfactory completion of cleaning during this period, whichever is later.

**2.045 Pro-ration**

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

**2.046 Antitrust Assignment**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



**2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

**2.048 Electronic Payment Requirement**

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all Contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

**2.050 Taxes****2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

**2.052 Sales and Use Taxes**

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

**2.060 Contract Management****2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries and must be fully qualified to perform the work assigned to them.

**2.062 Contractor Key Personnel – Deleted – Not Applicable****2.063 Re-assignment of Personnel at the State's Request**

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

**2.064 Contractor Personnel Location – Deleted – Not Applicable**

**2.065 Contractor Identification**

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

**2.066 Cooperation with Third Parties**

Contractor agrees to cause its personnel to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other Contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

**2.067 Contractor Return of State Equipment/Resources – Deleted – Not Applicable****2.068 Contract Management Responsibilities**

The Contractor will be required to assume responsibility for all Contractual activities. Further, the State will consider the Contractor to be the sole point of contact with regard to Contractual matters, including payment of any and all charges resulting from the anticipated Contract.

**2.070 SubContracting by Contractor – Deleted – Not Applicable**  
**SubContractors are not authorized under this Contract.**

**2.071 Contractor Full Responsibility – Deleted – Not Applicable****2.072 State Consent to Delegation – Deleted – Not Applicable****2.073 SubContractor Bound to Contract – Deleted – Not Applicable****2.074 Flow Down – Deleted – Not Applicable****2.075 Competitive Selection – Deleted – Not Applicable**

**2.080 State Responsibilities**

**2.081 Equipment – Deleted – Not Applicable****2.082 Facilities – Deleted – Not Applicable**

**2.090 Security**

**2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.





All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

## **2.092 Security Breach Notification**

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

## **2.093 PCI Data Security Requirements – Deleted – Not Applicable**

### **2.100 Confidentiality**

#### **2.101 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

#### **2.102 Protection and Destruction of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees who must have access to fulfill the purposes of this Contract.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

#### **2.103 Exclusions**

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

**2.104 No Implied Rights**

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

**2.105 Respective Obligations**

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

**2.110 Records and Inspections****2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

**2.112 Examination of Records**

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor.

**2.113 Retention of Records**

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

**2.114 Audit Resolution**

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

**2.115 Errors**

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

**2.120 Warranties****2.121 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (d) It is qualified and registered to transact business in all locations where required.
- (e) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any Contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (f) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (g) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (h) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (i) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (j) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (k) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any Contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.



(I) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after Contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

**2.122 Warranty of Merchantability – Deleted – Not Applicable**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted – Not Applicable**

**2.124 Warranty of Title – Deleted – Not Applicable**

**2.125 Equipment Warranty – Deleted – Not Applicable**

**2.126 Equipment to be New – Deleted – Not Applicable**

**2.127 Prohibited Products – Deleted – Not Applicable**

**2.128 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

**2.130 Insurance**

**2.131 Liability Insurance**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by anyone directly or indirectly employed by the Contractor or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverage's provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See [www.michigan.gov/dleg](http://www.michigan.gov/dleg).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

☒ 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations  
\$2,000,000 Products/Completed Operations Aggregate Limit  
\$1,000,000 Personal & Advertising Injury Limit  
\$1,000,000 Each Occurrence Limit



The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:

\$100,000 each accident  
\$100,000 each employee by disease  
\$500,000 aggregate disease

## **2.132 SubContractor Insurance Coverage – Deleted – Not Applicable**

### **2.133 Certificates of Insurance and Other Requirements**

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance.





If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

#### **2.140 Indemnification**

##### **2.141 General Indemnification**

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor.

##### **2.142 Code Indemnification – Deleted – Not Applicable**

##### **2.143 Employee Indemnification – Deleted – Not Applicable**

##### **2.144 Patent/Copyright Infringement Indemnification – Deleted – Not Applicable**

##### **2.145 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

##### **2.146 Indemnification Procedures**

The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

### **2.150 Termination/Cancellation**

#### **2.151 Notice and Right to Cure**

If the Contractor breaches the Contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

#### **2.152 Termination for Cause**

(a) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of Contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

#### **2.153 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

**2.154 Termination for Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

**2.155 Termination for Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract.

**2.156 Termination for Approvals Rescinded**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

**2.157 Rights and Obligations upon Termination**

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.



**2.158 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

**2.160 Termination by Contractor****2.161 Termination by Contractor**

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

**2.170 Transition Responsibilities**

**2.171 Contractor Transition Responsibilities – Deleted – Not Applicable**

**2.172 Contractor Personnel Transition – Deleted – Not Applicable**

**2.173 Contractor Information Transition – Deleted – Not Applicable**

**2.174 Contractor Software Transition – Deleted – Not Applicable**

**2.175 Transition Payments**

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.176 State Transition Responsibilities**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

**2.180 Stop Work**

**2.181 Stop Work Orders – Deleted – Not Applicable**

**2.182 Cancellation or Expiration of Stop Work Order – Deleted – Not Applicable**

**2.183 Allowance of Contractor Costs – Deleted – Not Applicable**



### **2.190 Dispute Resolution**

#### **2.191 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

#### **2.192 Informal Dispute Resolution**

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

#### **2.193 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

#### **2.194 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

**2.200 Federal and State Contract Requirements****2.201 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

**2.202 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a Contract with a SubContractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the SubContractor, manufacturer or supplier of Contractor appears in the register.

**2.203 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

**2.204 Prevailing Wage – Deleted – Not Applicable****2.210 Governing Law****2.211 Governing Law**

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

**2.212 Compliance with Laws**

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

**2.213 Jurisdiction**

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

**2.220 Limitation of Liability****2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

**2.230 Disclosure Responsibilities****2.231 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (a) Contractor will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
  - (b) Contractor has not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
- (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

**2.232 Call Center Disclosure**

Contractor involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

**2.233 Bankruptcy**

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

**2.240 Performance****2.241 Time of Performance**

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

**2.242 Service Level Agreements (SLAs) – Deleted – Not Applicable****2.243 Liquidated Damages – Deleted – Not Applicable****2.244 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party is without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its Contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition.

**2.250 Approval of Deliverables**

- 2.251 Delivery Responsibilities – Deleted – Not Applicable**
- 2.252 Delivery of Deliverables – Deleted – Not Applicable**
- 2.253 Testing – Deleted – Not Applicable**
- 2.254 Approval of Deliverables, In General – Deleted – Not Applicable**
- 2.255 Process For Approval of Written Deliverables – Deleted – Not Applicable**

**2.256 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

- 2.257 Process for Approval of Physical Deliverables – Deleted – Not Applicable**
- 2.258 Final Acceptance – Deleted – Not Applicable**

**2.260 Ownership**

- 2.261 Ownership of Work Product by State – Deleted – Not Applicable**
- 2.262 Vesting of Rights – Deleted – Not Applicable**
- 2.263 Rights in Data – Deleted – Not Applicable**
- 2.264 Ownership of Materials – Deleted – Not Applicable**

**2.270 State Standards**

- 2.271 Existing Technology Standards – Deleted – Not Applicable**
- 2.272 Acceptable Use Policy – Deleted – Not Applicable**
- 2.273 Systems Changes – Deleted – Not Applicable**

**2.280 Extended Purchasing**

- 2.281 MIDEAL – Deleted – Not Applicable**
- 2.282 State Employee Purchases – Deleted – Not Applicable**



**2.290 Environmental Provision****2.291 Environmental Provision - Deleted – Not Applicable****2.300 Other Provisions****2.311 Forced Labor, Convict Labor, or Indentured Servitude Made Materials**

Bidder represents and certifies that, to the best of its knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, will be furnished to the State under any resulting Contract, that have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

\_\_\_\_\_ (Initial)

**2.321 Knowledge of Child Labor for Listed End Products**

- (a) "Forced or indentured child labor" means all work or service:
- (i) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
  - (ii) Performed by any person under the age of 18 under a Contract the enforcement of which can be accomplished by process or penalties.
- (b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin

- (c) *Certification.* The State will not make award to a Bidder unless the Bidder, by checking the appropriate block, certifies to one of the following:

( ) The Bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

( ) The Bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The Bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture the end product. On the basis of those efforts, the Bidder certifies that it is not aware of any the use of child labor.

\_\_\_\_\_ (Initial)





Attachment A, Price Proposal

**MAINTENANCE, REPAIR & OPERATIONS (MRO)  
ROAD SIDE MOWING - BLUE WATER BRIDGE  
GENERAL LAWN CARE MAINTENANCE SERVICES  
BPO#: 071B9200202**

**LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**SECTION I – PLACE OF SERVICES REQUESTED**

<b>CONTRACT INFORMATION</b>			
<b>ESTIMATED CONTRACT START DATE:</b>	05/01/2009	<b>CONTRACT END DATE:</b>	04/30/2014
<b>PREVIOUS BPO #:</b>	071B3001380		
<b>CONTRACT INFORMATION:</b>	(Five) Year Contract with 2 Each 1 Year Option to Extend		
<b>CONTRACTING AGENCY NAME:</b>	MDOT		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Blue Water Bridge Plaza & Maintenance Facility		
<b>BUILDING ADDRESS:</b>	1410 Elmwood Street, Port Huron, MI 48060		
<b>REGION / COUNTY:</b>	Metro Region St. Clair County		
<b>PROCUREMENT CONTACT INFORMATION</b>			
<b>PROCUREMENT OFFICE NAME:</b>	MDOT Purchasing		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	dolanr@michigan.gov	<b>CONTACT FAX #:</b>	517-373-3528
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Michael Szuch	<b>CONTACT PHONE #:</b>	810-984-3131
<b>CCI / FM CONTACT E-MAIL:</b>	szuchm@michigan.gov	<b>CONTACT FAX #:</b>	810-984-1810
<b>LOCATION INFORMATION</b>			
<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	Mon. – Fri.	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	7:00 AM to 5:00PM
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	41 Acres	<b>(FILL IN IF NEEDED)</b>	N/A
<b>IDENTIFY DAYS OF SERVICE:</b>	To be determined by CCI	<b>IDENTIFY HOURS OF SERVICE: AS DIRECTED BY CCI]</b>	To be determined by CCI



## SECTION II – PRICING SHEET SUMMARY

### ROADSIDE MOWING SERVICES

Check all that apply	DESCRIPTION OF SERVICES	ACRES PER CYCLE	CYCLES PER YEAR	PRICE PER ACRE (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Flat & Slope Mowing and trim Blue Water Bridge & surrounding MDOT property Maintenance Facility located on I-94	41	24	\$25.97	\$25,554.48
<input type="checkbox"/>	Spring & Fall Clean Up to be performed once in the Spring and once in the Fall, for the plaza area, areas around the ramps and the Employee Parking Lot, and Maintenance Facility located on I-94	41	2	\$11.83	\$970.06
5 YEAR TOTAL					\$26,524.54

**Quantities are estimates only; actual quantities will determined by Contract Compliance Inspector.**

**\*Contractor must inspect the property for tree limbs/branches and debris that would need to be removed from the grass areas prior to mowing. Debris shall also include paper on the ground and must be removed prior to mowing – must not be mowed over. Remove grass clippings as necessary.**

**EQUIPMENT**

Bidder Instructions: Provide a complete list of all the equipment you will utilize to manage the scope of work for this contract location. List should include all equipment to be used during services and any other function(s) needed to perform this service. Also indicate whether the equipment is owned or rented. (Expand the table if necessary or submit separate table of equipment/supplies with proposal).

TYPE OF MOWER/TRIMMER	MANUFACTURER/ MODEL	SERIAL No. & HORSEPOWER @ PTO	APPROXIMATE AGE OF EQUIPMENT & <u>OWNED</u> OR <u>RENTED/LEASED</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			



**MAINTENANCE, REPAIR & OPERATIONS (MRO)  
ROAD SIDE MOWING – MT. PLEASANT TSC  
BPO#: 071B9200202  
LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**PART I – PLACE OF SERVICES REQUESTED**

**BIDDER NAME: KEVIN'S LAWN CARE**

**LOCATION: 02**

**CONTRACT INFORMATION**

<b>ESTIMATED CONTRACT START DATE:</b>	05/01/2009	<b>CONTRACT END DATE:</b>	04/30/2014
<b>PREVIOUS BPO #:</b>	071B2001502		
<b>CONTRACT INFORMATION:</b>	Approximately 5 Year Contract with 2 each 1 year options to extend		
<b>CONTRACTING AGENCY NAME:</b>	Department of Transportation		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Bay Region Office		
<b>BUILDING ADDRESS:</b>	55 Morley Drive, Saginaw MI 48601		
<b>REGION / COUNTY:</b>	Bay Region		

**PROCUREMENT CONTACT INFORMATION**

<b>PROCUREMENT OFFICE NAME:</b>	MDOT		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	dolanr@michigan.gov	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Mike Metiva	<b>CONTACT PHONE #:</b>	989-754-0784
<b>CCI / FM CONTACT E-MAIL:</b>	metivam@Michigan.gov	<b>CONTACT FAX #:</b>	989-754-9250

**LOCATION INFORMATION**

<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	N/A	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	N/A
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	N/A	<b>(FILL IN IF NEEDED)</b>	N/A
<b>IDENTIFY DAYS OF SERVICE:</b>	Determined by CCI	<b>IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. To 5:30 P.M.]</b>	Determined by CCI



## PART II – PRICING SHEET SUMMARY

## ROADSIDE MOWING SERVICES

Check all that apply	DESCRIPTION OF SERVICES	ACRES PER CYCLE	CYCLES PER YEAR	PRICE PER ACRE (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Flat Mowing – <b>Freeway:</b> US 127, <b>Non Freeway:</b> US 127 BR, US 10 BR, M-20	390.2	1	\$23.25	\$9,072.15
<input type="checkbox"/>	Flat Mowing (Optional) – <b>Freeway:</b> US 127, <b>Non Freeway:</b> US 127 BR, US 10 BR, M-20	390.2	2	\$23.25	\$18,144.30
<input type="checkbox"/>	Clear Vision Flat Mowing Only (Optional) M-20	19.28	1	\$29.82	\$574.93
<b>SUBTOTAL</b>					\$27,791.38
<b>FIVE YEAR TOTAL</b>					\$138,956.90

Quantities are estimates only; actual quantities will determined by Contract Compliance Inspector.

\*Contractor must inspect the property for tree limbs/branches and debris that would need to be removed from the grass areas prior to mowing. Debris shall also include paper on the ground and must be removed prior to mowing – must not be mowed over. Remove grass clippings as necessary.

## EQUIPMENT

Bidder Instructions: Provide a complete list of all the equipment you will utilize to manage the scope of work for this contract location. List should include all equipment to be used during services and any other function(s) needed to perform this service. Also indicate whether the equipment is owned or rented. (Expand the table if necessary or submit separate table of equipment/supplies with proposal).

EXAMPLE EQUIPMENT & SUPPLIES LIST FORMAT

EQUIPMENT	MODEL	MANUFACTURER	APPROXIMATE AGE OF EQUIPMENT & OWNED OR RENTED
1.			
2.			
3.			
4.			
5.			
6.			
7.			



## BAY REGION

LOCATIONS  
ISABELLA COUNTY

## Roadside Mowing Description of Work

<u>ROUTE</u>	<u>DESCRIPTION</u>	<u>ACRES</u>
US-127	N Gratiot Co Line to Clare Co Line Ramps	210.00 7.00
US-127 BR	US-127 to Bluegrass Rd. Mission Rd to US-127 US-127 N to Clare Co Line	5.25 5.75 9.10
US-10	Clare Co Line E to Midland Co Line Ramps	63.25 2.00
US-10 BR	Clarabella Rd E to US-10	6.75
M-20	W. Isabella Co Line E to Lincoln Rd Summerton Rd. E to W. Isabella Co Line	59.50 21.60
<b><u>TOTAL</u></b>		<b><u>390.2</u></b>

## ISABELLA COUNTY

Roadside Mowing Description of Work  
Clear Vision Areas Only

<u>EASTSIDE GARAGE AREA</u>		
<u>ROUTE</u>	<u>DESCRIPTION</u>	<u>ACRES</u>
M-20	W. Midland Co Ln to E Mt. Pleasant CL W. Mt Pleasant CL to W. Isabella Co Ln	19.28
<b><u>TOTAL</u></b>		<b><u>19.28</u></b>

**Note:** Quantities are estimates only. Contact Contract Compliance Inspector (CCI) to get approval for any amounts over the stated estimate quantity. Contractor will be provided with an updated, itemized location list each year before commencing work.